

DENNIS J. HERRERA, State Bar #139669
City Attorney
DANNY CHOU, State Bar # 180240
Chief of Complex and Special Litigation
JAMES M. EMERY, State Bar #153630
Deputy City Attorney
Fox Plaza
1390 Market Street, Seventh Floor
San Francisco, California 94102-5408
Telephone: (415) 554-4261
Facsimile: (415) 554-3985
E-Mail: jim.emery@sfgov.org

Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Nora Jean Dunaway, and Coalition on
Homelessness,

Plaintiffs,

vs.

City and County of San Francisco,

Defendants.

Case No. 08-1715 PJH

SAN FRANCISCO'S MEMORANDUM
OF POINTS AND AUTHORITIES IN
OPPOSITION TO PLAINTIFFS'
MOTION FOR TEMPORARY
RESTRAINING ORDER

Hearing Date: April 2, 2008
Time: 2:30 p.m.
Judge: Hon. Phyllis J. Hamilton
Courtroom: 3, 17th Floor

Trial Date: Not Set

INTRODUCTION

San Francisco's services for its homeless population provide a national model of compassion and effectiveness. Notwithstanding the challenges of a population with complex needs, high housing costs, and a City that is a magnet for homeless people nationwide, San Francisco ("the City") has effectively and systematically reduced the numbers of homeless over the past several years.

1 In the past few years, San Francisco has applied more innovation and resources
2 to ending homelessness than any time in its history. From 2004 to the end of
3 January 2007, 2,907 homeless individuals were placed in permanent supportive
4 housing with the help of several ambitious City initiatives. During this time
5 span, another 1,864 homeless individuals left San Francisco to be reunited with
6 friends or family members in other parts of the country through the City's
7 Homeward Bound Program. In addition, 453 individuals on public assistance
8 secured housing on their own. In total, since 2004 through the end of January
9 2007, 5,224 individuals exited homelessness through various initiatives.
10 However, the fact that San Francisco remains a destination for homeless
11 persons from other counties and states counterbalances the City's progress at
12 reducing the number of homeless. In fact, one-third of surveyed homeless
13 individuals reported that they first became homeless outside of San Francisco.

14 Plaintiffs' MPA, Exh. B, at 5. The unsheltered or "street" population declined by 7% between 2005
15 and 2007. Since 2002, the "street" homeless population declined by 38%. *Id.* at 5-6.

16 Plaintiffs filed their complaint yesterday, on March 31, 2008, and served a motion for a
17 temporary restraining order, seeking an immediate order from the Court to require the San Francisco
18 ("the City") to keep open Buster's Place, a 24-hour drop-in center for homeless adults. Buster's Place
19 could accommodate up to 150 clients in chairs. It had no beds. The Court set a hearing for the
20 afternoon of April 2, and directed the City to submit opposition papers on April 1.

21 The City closed Buster's Place on March 31, pursuant to its long-announced plan to do so.
22 The City had spent the previous two weeks engaging in intense outreach services to the clients who
23 visited Buster's Place, offering to arrange alternative services for them. Even with the closure, the
24 City retains three other 24-hour drop-in centers. More importantly, the shelter system appropriately
25 accommodates the needs of homeless individuals with disabilities, providing meaningful access to the
26 shelter system.

27 The requested injunction would force the City to make compensatory cuts in medical and
28 mental health services to the same population that used Buster's Place. The balance of hardships
weighs against plaintiffs' injunction.

For the foregoing reasons, set forth more fully below, the Court should deny plaintiffs' request
for a temporary restraining order.

ARGUMENT**I. PLAINTIFFS WILL NOT PREVAIL ON THE MERITS**

Plaintiffs' theory depends on a showing that Buster's Place is the *only* 24-hour drop-in center available for homeless San Franciscans, *and* that without Buster's Place, the City has failed reasonably to accommodate the needs of its disabled homeless population. Plaintiffs must establish that plaintiff Dunaway lacks meaningful access to the City's shelter program. *See* Plaintiffs' MPA, at 11-13 (citing *Henrietta D. v. Bloomberg*, 331 F.3d 261, 277 (2d Cir. 2003)).¹

The facts do not support plaintiffs. On March 28, 2008, Mayor Newsom signed into law a San Francisco Ordinance entitled "Standards of Care for City Shelters." Emery Decl., Exh. A. Among its other provisions, City law now mandates that the City shall provide "at least one 24-hour emergency drop-in center." S. F. Admin Code, Chapt. 20, Art. XIII, § 20.403(b). In fact, at least three 24-hour drop-in centers are now available in the City: 150 Otis Street, OShum, and 2111 Jennings Street in the Bayview. An alternative 24-hour drop-in center for men opened at midnight on March 31, just one block from Buster's Place at 150 Otis Street. The facility at 150 Otis Street has both chairs and beds for its male clients. A 24-hour drop-in center for women operates at Turk and Taylor Streets in San Francisco. The City maintains a co-ed 24-drop-in center at 2111 Jennings Street in the Bayview. In addition, beds are typically available for women on a walk-in basis at the Next Door shelter, located at 1001 Polk Street.

Even if the City's homeless population lacked any 24-hour drop in center, in violation of the City's own statutory standards of care, then still the City still reasonably accommodates its disabled homeless population and provides meaningful access to its shelter system. Contrary to plaintiffs' contentions, the City has not erected "intolerable" hurdles for the disabled in its shelter reservation system. Any client who receives public assistance under the County Adult Assistance Program and is homeless will receive assistance from his or her eligibility worker to secure a shelter bed. The City has posted at each Resource Center, where shelter reservations are made, a Notice of Rights for People with Disabilities. Crum Declaration, Exh. A. As reflected in the Notice, disabled clients are

¹ For purposes of this motion only, the City will accept plaintiffs' statement of applicable law.

1 not required to wait in line for a shelter reservation, if their disability requires such an
2 accommodation. Other requirements are waived or modified to reasonably accommodate disabilities,
3 such as the finger imaging requirement. And Resource Center staff will provide extra help as needed
4 to fill out forms. All shelter staff receive ADA training. Each shelter has a designated "ADA
5 liaison," who receives extra training. The City's ADA complaint procedure is posted at Resource
6 Centers and shelters.

7 The data plaintiffs themselves submitted to this Court repudiate their contention that disabled
8 homeless lack meaningful access to the City's shelter system. According to plaintiffs, roughly 60% of
9 the total homeless population in San Francisco are disabled. Plaintiffs' MPA, at 5:3-4. Plaintiffs then
10 assert that "over 60% of the sheltered homeless population was severely mentally ill." *Id.*, at 5:5-6.
11 Plaintiffs thus acknowledge that the proportion of disabled persons in the sheltered population mirrors
12 the proportion of disabled persons in the general homeless population. This close correlation
13 affirmatively demonstrates that disabled individuals indeed have meaningful access to the City's
14 shelter system.

15 For these reasons, plaintiffs cannot show that the City has failed reasonably to accommodate
16 its disabled homeless population, or that the disabled homeless lack meaningful access to the shelter
17 system.

18 **II. THE BALANCE OF HARDSHIPS WEIGHS AGAINST THE REQUESTED** 19 **INJUNCTION**

20 In any event, the balance of hardships weighs strongly against the emergency relief plaintiffs
21 seek. First, plaintiffs cannot justify their delay in seeking this extraordinary relief. The City
22 announced the planned closure of Buster's Place back in January 2008. Yet plaintiffs waited until the
23 very day of closing to file this lawsuit and seek their temporary restraining order. As a direct result of
24 plaintiffs' delay, the City has already closed Buster's Place before the Court had an opportunity to
25 hear the matter.

26 Plaintiffs simplistically frame the balance of hardships as financial costs to the City versus
27 services plaintiffs' deem essential. The City, though, by law, must balance its budget each year. Cal.
28 Const. Art. XVI, § 18; San Francisco Admin. Code Art. IX, § 9.101. Current budget shortfalls

1 require the City's' Department of Public Health to implement \$46 million in cuts for the coming fiscal
2 year, beginning July 1, 2008. Savings due to cuts being made earlier (mid-year cuts) can be used to
3 offset the \$46 million shortfall. DPH has already implemented numerous budget cut-backs this year,
4 which have been the subject of several public hearings, and have been approved by the City's Health
5 Commission. Buster's Place did not provide any rehabilitative or restorative services to the clients
6 who congregated there. Closing Buster's Place was a necessary component of DPH's carefully
7 considered response to the difficult fiscal environment. If DPH is required to reopen Buster's Place,
8 then DPH will have to make deeper cuts in more valuable programs that provide medical and mental
9 health services to the same population served in the city's shelter system.

10 CONCLUSION

11 For the foregoing reasons, the Court should deny plaintiffs' motion for a temporary restraining
12 order.

13 Dated: April 1, 2008

14 DENNIS J. HERRERA
15 City Attorney
16 DANNY CHOU
17 Chief of Complex and Special Litigation
18 JAMES M. EMERY
19 Deputy City Attorney

20 /s/ James Emery

21 By: _____
22 JAMES M. EMERY

23 Attorneys for Defendant
24 CITY AND COUNTY OF SAN FRANCISCO
25
26
27
28